

§ 105-130.4B. (Effective for taxable years beginning on or after January 1, 2020)

Market-based sourcing for banks.

(a) Definitions. – The definitions in G.S. 105-130.4 apply to this section, and the following definitions apply to this section:

- (1) Bank. – Defined in G.S. 105-130.7B.
- (2) Billing address. – The location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the date in the taxable year when the customer relationship began, as the address where any notice, statement, or billing relating to the customer's account is mailed.
- (3) Borrower, cardholder, or payor located in this State. – A borrower, credit cardholder, or payor whose billing address is in this State.
- (4) Card issuer's reimbursement fee. – The fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.
- (5) Credit card. – A card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.
- (6) Debit card. – A card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.
- (7) Loan. – Any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such an extension of credit from another. The term includes participations, syndications, and leases treated as loans for federal income tax purposes.
- (8) Loan secured by real property. – A loan or other obligation of which fifty percent (50%) or more of the aggregate value of the collateral used to secure the loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.
- (9) Merchant discount. – The fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the cardholder, net of any cardholder chargeback and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its cardholder.
- (10) Participation. – An extension of credit in which an undivided ownership interest is held on a prorated basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.
- (11) Payor. – The person who is legally responsible for making payment to the taxpayer.
- (12) Real property owned. – Real property (i) on which the taxpayer may claim depreciation for federal income tax purposes or (ii) to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. Real property does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

- (13) Syndication. – An extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.
- (14) Tangible personal property owned. – Tangible personal property (i) on which the taxpayer may claim depreciation for federal income tax purposes or (ii) to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes could claim depreciation if subject to federal income tax. Tangible personal property does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.
- (15) Transportation property. – Vehicles and vessels capable of moving under their own power as well as any equipment or containers attached to such property. Examples of transportation property include aircraft, trains, water vessels, motor vehicles, rolling stock, barges, and trailers.

(b) General Rule. – The receipts factor of a bank is a fraction, the numerator of which is the total receipts of the taxpayer in this State during the income year, and the denominator of which is the total receipts of the taxpayer everywhere during the income year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor includes only those receipts described herein that are apportionable income for the taxable year. Notwithstanding any other provision under this Part, the receipts from the following are excluded from both the numerator and the denominator of the receipts factor:

- (1) Receipts from a casual sale of property.
- (2) Receipts exempt from taxation.
- (3) The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.
- (4) Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a) and (3b) and dividends excluded for federal tax purposes.
- (5) The portion of receipts from financial swaps and other similar financial derivatives that represent the notional principal amount that generates the cash flow traded in the swap agreement.

(c) Receipts from the Sale, Lease, or Rental of Real Property. – The numerator of the receipts factor includes receipts from the sale, lease, or rental of real property owned by the taxpayer if the property is located within this State or receipts from the sublease of real property if the property is located within this State.

(d) Receipts from the Sale, Lease, or Rental of Tangible Personal Property. – The method for calculating receipts from the sale, lease, or rental of tangible personal property is as follows:

- (1) Tangible personal property. – Except as provided in subdivision (2) of this subsection, the numerator of the receipts factor includes receipts from the sale, lease, or rental of tangible personal property owned by the taxpayer if the property is located within this State when it is first placed in service by the lessee.
- (2) Transportation property. – Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this State. The extent an aircraft will be deemed to be used in this State and the amount of receipts that is to be included in the numerator of this State's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this State and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this State cannot

be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(e) Interest, Fees, and Penalties from Loans Secured by Real Property. – The numerator of the receipts factor includes interest, fees, and penalties from loans secured by real property if the property is located within this State. If the property is located both within this State and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent (50%) of the fair market value of the real property is located within this State. If more than fifty percent (50%) of the fair market value of the real property is not located within any one state, then the receipts described in this subsection are included in the numerator of the receipts factor if the borrower is located in this State. The determination of whether the real property securing a loan is located within this State is made as of the time the original agreement was made and any and all subsequent substitutions of collateral are disregarded.

(f) Interest, Fees, and Penalties from Loans Not Secured by Real Property. – The numerator of the receipts factor includes interest, fees, and penalties from loans not secured by real property if the borrower is located in this State.

(g) Net Gains from the Sale of Loans. – The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans include income recorded under the coupon stripping rules of section 1286 of the Code. The amount of net gains from the sale of loans that is included in the numerator is determined as follows:

- (1) Secured by real property. – The amount of net gains, but not less than zero, from the sale of loans secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section, and the denominator of which is the total amount of interest, fees, and penalties from loans secured by real property.
- (2) Not secured by real property. – The amount of net gains, but not less than zero, from the sale of loans not secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (f) of this section, and the denominator of which is the total amount of interest, fees, and penalties from loans not secured by real property.

(h) Receipts from Interest, Fees, and Penalties from Cardholders. – The numerator of the receipts factor includes interest, fees, and penalties charged to credit, debit, or similar cardholders, including annual fees and overdraft fees, if the cardholder is located in this State.

(i) Receipts from ATM Fees. – The numerator of the receipts factor includes receipts from fees from the use of an ATM owned or rented by the taxpayer, if the ATM is located in this State. The receipts factor includes all ATM fees that are not forwarded directly to another bank. Receipts from ATM fees that are not sourced under this subsection are sourced pursuant to subsection (l) of this section.

(j) Net Gains from the Sale of Credit Card Receivables. – The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (h) of this section, and the denominator of which is the taxpayer's total amount of interest, fees, and penalties charged to cardholders.

(k) Miscellaneous Receipts. – The numerator of the receipts factor includes all of the following:

- (1) Card issuer's reimbursement fees. – Receipts from card issuer's reimbursement fees if the payor is located in this State.

- (2) Receipts from merchant's discount. – Receipts from a merchant discount if the payor is located in this State.
 - (3) Loan servicing fees. – Receipts from loan servicing fees if the payor is located in this State.
 - (4) Receipts from services. – Receipts from services not otherwise apportioned under this section if the payor is located in this State.
 - (5) Receipts from investment assets and activity and trading assets and activity. – Receipts from one or more of the following:
 - a. Interest and dividends from investment assets and activities and trading assets and activities if the payor is located in this State.
 - b. Net gains and other income, but not less than zero, from investment assets and activities and trading assets and activities multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to sub-subdivision a. of this subdivision, and the denominator of which is the taxpayer's total amount of interest and dividends from investment assets and activities and trading assets and activities.
- (l) All Other Receipts. – All other receipts not specifically enumerated in this section are included in the numerator of the receipts factor if the payor is located in this State. (2019-246, s. 3(c).)